IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Crl. Revision No. 196 of 1992

Date of decision : March 21, 2007.

Anil Kumar

..... Petitioner

versus

State of Haryana

..... Respondent

**Coram: Hon'ble Mr. Justice A.N. Jindal**

Present: Mr. Vivek Goyal, Advocate
for the petitioner.

Ms. Shalini Attri, AAG, Haryana
for the respondent.

***A.N. Jindal, J.***

This revision petition is directed against the judgment dated 28.2.1992 passed by learned Sessions Judge, Ambala dismissing the appeal against the judgment of conviction and sentence dated 24/27.1.1989 passed by Chief Judicial Magistrate, Ambala convicting the accused-petitioner Anil Kumar under Section 9 of the Opium Act and sentencing him to undergo rigorous imprisonment for two years and to pay fine of Rs.2000/-.

The case relates to the occurrence of 28.5.1980 but the apathy of the trial Court was that the accused persons remained absconding from 17.12.1985 to 23.2.1987, therefore, the case was decided on 24.1.1989. It is also pertinent to mention here that the accused Baldev Singh was declared Proclaimed Offender and only Anil Kumar could be tried.

The factual matrix of the case is that on 28.5.1980, when SI Hari Ram along with other police officials was present on the Sales Tax Check Barrier, Devi Nagar, the accused Baldev Singh (since proclaimed offender) while driving truck No.USC-7801 arrived there. Accused Anil Kumar was sitting on the bags loaded in the truck. Baldev Singh driver, entered into a quarrel with the checking staff, consequently both of them were detained by the Excise Staff and the police was called. As soon as SI Hari Ram reached at the spot, in the meanwhile, accused Baldev Singh slipped away. On search of the truck 110 bags, each containing 80 kgs

poppy husk were recovered. Half-kilogram poppy husk was separated from each bag as sample. The sample parcels as well the remaining poppy husk bags were taken into possession vide different memos. All the formalities were completed at the spot. On receipt of the report of the Chemical Examiner, vide which contents of the bags were found to be poppy husk, challan against the accused was presented in the Court.

The trial ended into conviction. The appeal also met the same fate at the hands of learned Sessions Judge, Ambala. Hence this revision.

The trial Court as well as the appellate Court after appreciating the evidence of Chander Parkash Gullani, Tax Inspector (PW2) and SI Hari Ram (PW4) observed that there was no reason to doubt their testimonies and the accused having control over the vehicle knew fully well about the contents of the bags and there was no reason for the Investigating Officer to implicate them falsely in this case.

Now I refrain from disturbing the finding of the fact returned by the trial Court. However, it would be expedient in the interest of justice to refer the testimony of Chander Parkash Gullani (PW2) and SI Hari Ram (PW4). Both of them have consistently testified that on the evening of 28.5.1980 at about 7.30 PM, they stopped the truck No.USC-7801 and on the arrival of SI Hari Ram, accused Baldev Singh evaded his arrest by absconding. However, accused Anil Kumar was arrested and he could not explain his innocence at the spot. The testimonies of the aforesaid witnesses being consistent on all the material points, cannot be discarded merely for their status as such specially when no specific allegations of enmity had been levelled against them.

Now coming to the question of possession, it may be observed that since the accused being the cleaner of the truck was sitting over the bags of poppy husk, there was nothing else except these bags in the body of the truck. The nature of the contraband is suggestive of emanating foul smell. These circumstances are indicative of the fact that he fully knew about the contents of the bags. The accused had not taken any such plea that he did not know the contents of the bags. His blatant denial about the circumstances prevailing over the case also adds to the fact that he was in conscious possession of the contraband contained in the truck.

In his statement under Section 313 Cr.P.C., the accused has not taken the plea that he was just a stray passenger or had no knowledge of the contents as contained in the truck. He has also not explained as to how he happened to be in the truck when it was apprehended.

As regards affidavits Ex.PX and Ex.PY, it has been stated that they have not been properly attested, therefore, the link evidence would be treated as missing in the case. Having examined the report of Chemical Examiner Ex.PZ, it indicates that the samples were received in the laboratory as intact, therefore, the inference could be drawn that the samples remained intact from the date the same were taken and till these were delivered in the office of Chemical Examiner. The accused has also not challenged the report Ex.PZ in any manner. Therefore, evidence by way of affidavits, the attestation of which was defective, becomes immaterial and does not effect the substratum of the prosecution case.

No other point has been urged to assail the impugned judgment.

Consequently, finding no merit in the revision the same is hereby dismissed.

**(A.N. Jindal)**
**Judge**

March 21, 2007
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